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NO. 82-401

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

BAXTER RICE, Individually
and as Director of the Department
of Alcoholic Beverage Control
of the State of California

Petitioner,

v.

EVA REHNER,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Respondent Rehner is dissatisfied with petitioner's statement of the question presented, in particular the assumption or representation that the states were given "express powers ... under the Twenty-First Amendment to regulate ... alcoholic beverages in Indian Country within their boundaries." California's Petition for Certiorari [hereafter "PC"] pp. 2-3. Since it is settled that the twenty-first amendment does not extend the states' jurisdiction over federal lands (Section III (B), infra), and since Indian reservations are federal lands traditionally beyond the regulatory jurisdiction of the states, this case involves only questions of statutory, not Constitutional, interpretation. As the Ninth Circuit held in ruling against Washington's twenty-first amendment claims in the consolidated cases, "it is regulatory jurisdiction that is at issue in this case."

Rehner at 135. There is no need to decide Constitutional issues of a state's power under the twenty-first amendment to resolve this case; the amendment serves at most as a backdrop against which to consider Congress' intent in passing 18 U.S.C. § 1161. In addition, petitioner [hereafter "California" or "State"] never raised twenty-first amendment issues in either its district court or Ninth Circuit pleadings. See Section III (A), infra.

Since it is well-established that Congress retains jurisdiction over Indian reservations except to the degree that it is expressly delegated to the states, (Section III (B), infra) the true issue is whether Congress delegated reservation liquor licensing powers to the states by means of § 1161, not whether that statute deprived the state of an existing power.

Respondent would frame the question before this Court as it was presented by

California to the district court and the Ninth Circuit: Whether under 18 U.S.C. § 1161 the states have licensing and distribution jurisdiction over Indian country liquor transactions. cf. Rehner at 1341-2.

PARTIES TO THE CASE

The only parties to this case are petitioner Rice and respondent Rehner. However, this case was consolidated for argument and decision with two cases from the State of Washington, Muckleshoot Indian Tribe v. Washington (Ninth Circuit No. 79-4403) and Tulalip Tribe v. Washington (Ninth Circuit No. 79-4404). The Ninth Circuit, sitting en banc, reversed the District Court in this case, but remanded the two Washington cases for further proceedings due to factors in the Washington cases not present in this one.

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OPINION BELOW

The Ninth Circuit's decision is reported at 678 F.2d 1340 (9th Cir. 1982) [hereafter "Rehner" or "Ninth Circuit decision"].

STATUTORY PROVISIONS INVOLVED

As pointed out above and in Section III (A), infra, California has not previously advanced any twenty-first amendment arguments. Respondent urges this Court to decline California's invitation to decide an unnecessary Constitutional issue. The only law directly involved in this case is 18 U.S.C. § 1161.

STATEMENT OF THE CASE

Respondent agrees with the statement of the case supplied by petitioner, but wishes to further explain the complex procedural history of this case.

After the district court entered its Judgment of May 11, 1977, respondent (plaintiff below) moved to vacate the judgment or to rehear the motion to dis-

miss. After extensive briefing, that motion was denied on January 17, 1978.

The case was originally argued before the Ninth Circuit on April 3, 1979, before Judges Goodwin, Gray and Hufstedler. Judge Hufstedler resigned before decision, and the panel was reconstituted to include Judge Sneed by order of January 4, 1980. Decision was deferred by the Ninth Circuit pending this Court's decision in another case. Supplemental briefs were requested by order of June 12, 1980. On November 10, 1981, the Ninth Circuit ordered rehearing by an en banc panel. Its decision was rendered on June 8, 1982.

SUMMARY OF ARGUMENT

In response to the Ninth Circuit's decision, the California Legislature enacted Senate Bill 1888, authorizing California liquor wholesalers to sell to non-state-licensed retail liquor establishments on Indian reservations and in

Indian Country. Because of California's implicit acquiescence in the Ninth Circuit's decision, Supreme Court review is unnecessary and inappropriate.

The Ninth and Tenth Circuit courts of appeal, the only ones to consider the question, have both held that states may not impose their liquor licensing requirements on Indian reservations. No conflict of appellate authority exists that requires Supreme Court resolution.

Twenty-first amendment issues were not raised by California below, so they are not properly before this Court. In any event, those arguments are unpersuasive, having been unsuccessfully urged in the Tenth Circuit and in the other consolidated cases in the Ninth Circuit. The twenty-first amendment did not enlarge the states' jurisdiction, only their power to deal with liquor within their existing jurisdiction. In addition, any extension of state liquor licensing

authority onto Indian reservations would conflict with pre-empting Federal laws and policies, and a balancing of interests would still defeat California's claimed licensing power. Since Congress has not expressly granted reservation liquor licensing power to California, the Ninth Circuit's holding that no such power exists is correct and should be allowed to stand.

ARGUMENT AGAINST GRANTING THE WRIT

I. California Has Subsequently Enacted Legislation Recognizing Its Lack of Authority to License Reservation Liquor Transactions

Shortly after the Ninth Circuit decision, a pending bill in the California Legislature (SB 1888) was amended to add persons doing business in Indian country to the list of non-licensees to whom li-

quor wholesalers can legally sell.[1] The bill passed, and was signed by Governor Brown on September 13, 1982 as Chapter 906 of the Legislature's 1982 session, after the state's petition for certiorari was filed. It will take effect on January 1, 1983, amending Business and Professions Code § 23384.[2]

The legislative committee report on the bill is included herewith as Appendix A. It states that the bill is "in response to the recent court decision in Eva Reiner v. ABC" (sic), and notes that "premises on lands owned by Indians need not

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[1]The other areas exempted are military bases, national parks, and certain veterans homes. Cal. Business & Professions Code § 23384.

[2]Respondent has not yet been able to secure a copy of the chaptered bill, but will file a supplemental exhibit or brief under Rule 22(G) when a copy is available, if the Court so desires.

be licensed by the ABC." (California's Department of Alcoholic Beverage Control). It is thus clear beyond argument that the California Legislature, in considering the bill, knew of and accepted the Rehner decision, and amended California's laws appropriately.

The bill's impetus came from the liquor wholesalers' association, which was concerned about its members' legal ability to sell to unlicensed reservation dealers. See Appendix A. In light of the Ninth Circuit decision, it was not necessary to insert specific language exempting reservation sellers from state licensure, and no express provision to that effect appeared in the legislation.

Granting wholesalers the right to sell to unlicensed reservation liquor outlets clearly shows the California Legislature's acquiescence in the Rehner decision, since otherwise the act would be a nullity. If California could require res-

ervation sellers to obtain state liquor licenses, there would be no legitimate nonlicensees on the reservations to sell to. Of course, the Legislature could not have intended to authorize wholesalers to sell to illegal businesses; that would make no sense. The only logical conclusion is that the California Legislature acquiesced in the Rehner decision.

The bill did not differentiate between Indian and non- Indian reservation sellers, in line with the Ninth Circuit's conclusion that tribes have the exclusive power to license both Indians and non-Indians selling liquor on their reservations. Rehner at 1342, 1348. Although petitioner fails to recognize that lack of distinction in its arguments on Indian sales to non-Indians and non-Indian licensees, PC at 16-17, the amended statute is clear: a wholesaler may sell to any reservation nonlicensee. It is up to the tribe and the Federal government to li-

cense and regulate the reservation sellers, in accordance with § 1161, tribal ordinances, and other applicable laws. Thus, the only issue that was decided by the Ninth Circuit--California's power to require Mrs. Rehner to obtain a state liquor license--has been disposed of by the enactment of SB 1888.

This Court has often recognized that subsequent legislation can effectively settle all or many of the issues in a controversy. See, e.g., Kremens v. Bartley, 431 U.S. 119 (1977); United States v. New Jersey State Lottery Commission, 420 U.S. 371 (1975). Johnson v. Mississippi, 586 F.2d 387 (5th Cir. 1978), observed in a similar situation:

> After this appeal was filed, the Mississippi Legislature responded to the decision of the District Court by amending the statute .... This legislative action eliminated the unconstitutionality .... That being so, we are no longer presented with a live case or controversy.

Id. at 388.

A similar result was reached when Congress by statute gave a "clear directive" that settled a question of interpretation of an existing statute. Navajo Tribe v. Andrus, 644 F.2d 790, 791 (9th Cir. 1981). Once the Legislature speaks existing legal controversies must be reexamined to see whether actual disputes still exist.

Since the statute was amended after the Ninth Circuit's mandate was filed with the district court on August 2, 1982, the Rehner decision was certainly not "mooted" in a technical sense. At the time of the decision, there was an unquestionably live controversy that required resolution. A court should not "vacate its judgment when the rule it has reviewed is modified to conform to that judgment." Finberg v. Sullivan, 658 F.2d 93, 100 (3rd Cir. 1981). However, such subsequent modification is certainly an important consideration in granting or

denying certiorari. Since the legislation deals only with wholesalers, it would apparently still be a violation of state law to sell liquor on Indian reservations without a state license, if not for the Ninth Circuit's decision. Thus, the legislation does not moot the underlying controversy in a technical sense. However, it certainly makes it clear that California no longer asserts its liquor licensing power on Indian reservations. For that reason alone, the writ should be denied.

II. None Of The Usual Criteria for Granting Certiorari Apply to This Case

This Court normally accepts cases only to resolve conflicts between different courts or to decide nationally important questions of law. Supreme Court Rule 17.1. California's Constitutional claims under the twenty-first amendment are discussed in Section III, infra. None of the other Rule 17 considerations can even

arguably be applied here.

It has been the general policy of this Court to decline review of decisions not involving a conflict between the lower courts and/or an important federal question. Supreme Court Rule 17.1; Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923). The Rehner decision does not conflict with any other Court of Appeal decisions. To the contrary, the Tenth Circuit reached the same conclusion in United States v. New Mexico, 590 F.2d 323 (10th Cir. 1978) cert. denied, 444 U.S. 832 (1979), finding in favor of exclusive tribal licensing of liquor sales within Indian Country. Thus, a harmony of opinion presently exists between the only two federal appeals courts which have squarely addressed the issue at hand, both of which concluded that § 1161 did not extend the states' licensing authority.

Supreme Court review of this decision is thus unnecessary, and could only serve to disrupt an already functioning system of tribal liquor licensing, particularly in the Tenth Circuit where the New Mexico decision has been in effect for approximately four years. Also, as previously noted, in the Ninth Circuit California's legislation allowing liquor wholesalers to sell to non-licensed persons within Indian country will soon take effect. Accepting this case for review would create an apparent judicial/legislative conflict, causing great confusion.

The Ninth Circuit held that § 1161, while incorporating state substantive standards, did not confer reservation liquor licensing jurisdiction on the state. California attempts to create a definitional issue over what constitutes "substantive standards." No such problems are raised in this simple licensing case, nor have any practical problems yet arisen,

making their resolution premature. Should clarification become necessary at some future point, this is obviously a task best left to the district court; that court will have the benefit of the presentation of evidence and access to the full record to enable it to make such fine determinations.

California states that further interpretation and review of § 1161 is necessary because the reservation licensing was not addressed in United States v. Mazurie, 419 U.S. 544 (1975), inferring that this Court left open the issue for later determination. The Court in Mazurie nowhere gives any such indication. In fact, the court in U.S. v. New Mexico, supra, found that Mazurie "virtually decides the present question." Id. at 326. California does not explain why, if this Court wished to address the reservation licensing issue, it chose to deny certiorari in the New Mexico case. 444 U.S.

at 832. This Court, having once already declined to complete the "task of interpreting Section 1161," (PC 25), need not do so now.

California also argues that review of this case is necessary to address possible problems of enforcement of 18 U.S.C. § 1154. At the same time, California acknowledges that 18 U.S.C. § 1161 renders § 1154 inapplicable, provided the provisions of § 1161 are followed. Respondent is unaware of any contemplated, threatened, or actual prosecutions under § 1154. Again, California merely raises a hypothetical problem where none now exists. For the Court to address this issue without an actual controversy before it would be premature and unnecessary. Barker Painting Co. v. Local 734, Brotherhood of Painters, 281 U.S. 462 (1930). This issue need not be dealt with by the Court at this juncture.

The issue in this case is narrow: whether Indian tribes have the exclusive right to issue a license for retail sales of liquor within the boundaries of an Indian reservation. California argues, however, that widespread negative consequences will result if the Ninth Circuit's decision in favor of tribal jurisdiction is allowed to stand. It alleges that if the state loses the capacity to license Indian liquor retailers on the reservation, the state will also lose control over sales and distribution of liquor generally. PC 11. There is no basis for this conclusion. As discussed in Section III (C), supra, the Ninth Circuit's decision creates no jurisdictional bar to the continued enforcement of state criminal sanctions on Indian reservations. See Bryan v. Itasca County, 426 U.S. 373, 383-393 (1976). The application of the state penal code in the area of liquor sales or consumption is not dependent on

licensing per se. Except for the fact that the tribe rather than the state issues the license, an Indian retailer on the reservation would stand in the same position as any other liquor retailer in the state with respect to enforcement of substantive state law. It follows that petitioner's contentions as to the inability of the tribal, state or federal governments to enforce regulations against tribal liquor retailers are inapposite, as are petitioner's speculations about potential conflicts among enforcement agencies.

The resolution of this case in favor of exclusive tribal jurisdiction over liquor licensing will in most cases have little if any impact outside reservation boundaries, making inapplicable another possible reason to review the Ninth Circuit decision. The main result of this case will be that Indian retailers will pay the tribe rather than the state for

their liquor licenses. The state's capacity to protect the public from illegal liquor sales on Indian reservations remains unimpaired.

III. California's Twenty-First Amendment Arguments Are Neither Appropriate Nor Persuasive

A. California cannot advance this argument for the first time in this Court.

California has attempted in its petition to frame the issue in terms of its powers under the twenty-first amendment. Respondent will address those arguments in subsections (B) and (C), infra. However, the twenty-first amendment has never been urged previously by California as a basis for upholding its reservation licensing power, in either the Ninth Circuit or the district court. See Ninth Circuit Clerk's Record, Document Nos. 4, 6; Clerk's Supplemental Record at 68, 141; Appellee's Opening and Supplemental Brief. The state of Washington, in the cases consolidated for oral argument with

Rehner, unsuccessfully argued similar twenty-first amendment issues, but those arguments are specifically identified in the Ninth Circuit decision as Washington's rather than California's. Rehner at 1350. This Court should not grant certiorari to decide an issue that was not raised by petitioner in the proceedings below. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193, n. 13 (1976); [unpleaded claim not properly before Supreme Court]; Tennessee v. Dunlap, 426 U.S. 312, 314, n. 2 (1976) [claim pleaded but not addressed by lower courts not considered]. Since similar twenty-first amendment arguments have been flatly rejected by all appeals courts that have considered the issue, see Rehner at 1350, United States v. New Mexico, supra, at 329, and since California has not raised these arguments previously, this Court need not grant certiorari to rule on the issue.

B. California did not acquire territorial jurisdiction over Indian reservations through the twenty-first amendment.

A major premise of California's twenty-first amendment argument is that the amendment granted or reserved to California the power to license and regulate reservation liquor transactions, except as that power was limited by Congress in 18 U.S.C. § 1161. PC 23-24. From that, the state argues that a more stringent interpretation of 18 U.S.C. § 1161 is required, balancing the Indians' rights against the traditionally broad powers of a state to control liquor under the amendment. PC 19-24.

That argument is seriously weakened by a glaring flaw in its underlying premise. Cases have held repeatedly that the twenty-first amendment, while unquestionably increasing the states' power to deal with liquor issues within their jurisdiction, just as clearly did not increase

the states' territorial jurisdiction. Collins v. Yosemite Park & Curry Co., 304 U.S. 518, 538 (1938); United States v. Mississippi Tax Commission, 421 U.S. 599, 613-14 (1975); see generally Annot., 34 L.Ed.2d 805, 822-23. This case requires an inquiry into the respective limits of state, federal and tribal jurisdiction; assuming a grant of state jurisdiction by the amendment sidesteps the major issue, and tilts the balance in favor of the state with a heavy thumb.

It is surprising that California cites Collins in support of its argument that the amendment granted or increased state licensing jurisdiction over federal reservations. PC 7. That case, like this one, turned on the question of who had territorial jurisdiction. Once exclusive federal jurisdiction over Yosemite National Park was established, the conclusion that the amendment did not operate to defeat that jurisdiction was held

to be a necessary consequence: "Where exclusive jurisdiction is in the United States ... the Twenty-first amendment is not applicable." Id. at 538.

On federal lands, California has no jurisdiction except that granted or authorized by Congress. Id. at 533. This is particularly true on Indian reservations, because of the historical sovereign powers of the tribes and the unique federal-Indian relationship: grants of state jurisdiction over Indians "must be express, not implied." Bryan v. Itasca County, 426 U.S. 373, 390 (1976); see also Rehner at 1344. Prior to the passage of 18 U.S.C. § 1161 and "Public Law 280" (Act of August 15, 1953, 67 Stat. 588) ["PL-280"], California Indian reservations were, like Yosemite, under exclusively federal jurisdiction. The Rehner court properly limited its inquiry to the effect those statutes had on California's liquor licensing jurisdiction, and found

no express grant of licensing jurisdiction in those statutes. The twenty-first amendment, since it clearly did not increase the state's jurisdiction, Collins, supra, is not relevant to that jurisdictional inquiry. Petitioner's extensive reliance on its twenty-first amendment arguments only obscures the main issue: did § 1161 operate as a grant of licensing jurisdiction? The Ninth Circuit concluded it did not, and respondent believes that analysis and decision are correct. Since § 1161 did not expressly expand California's power to license reservation liquor businesses, that power remains with the federal government and the tribe.

C. California's asserted twenty-first amendment powers conflict with and are subservient to Federal laws and policies

As discussed above, the amendment did not extend the state's territorial

jurisdiction to federal land, and Indian reservations have historically been enclaves of exclusive federal jurisdiction. United States v. Forty-Three Gallons of Whiskey, 93 U.S. 188, 196 (1876). Even in areas clearly not under federal territorial jurisdiction, however, there has been a growing recognition that the states' powers under the twenty-first amendment are not unlimited. While the lack of territorial jurisdiction alone defeats California's twenty-first amendment arguments here, as discussed above, this parallel line of authority also argues against recognizing California's reservation liquor licensing jurisdiction. Although it is not necessary to reach this issue to decide the case, the cases illustrate the modern trend weakening the courts' traditional unquestioning deference to state liquor regulation.

There has traditionally been general agreement that the twenty-first amendment

is not a "plenary and exclusive grant" of liquor regulatory power to the states, to the exclusion of national laws and policies. U.S. v. Frankfort Distilleries, Inc., 324 U.S. 293, 299 (1944). One of the first Supreme Court cases squarely limiting a state's power to regulate liquor sales in derogation of conflicting federal law was Hostetter v. Idlewild Liquor Corporation, 377 U.S. 324 (1964). New York attempted to impose its liquor licensing requirements on an airport shop that sold only to departing passengers. Although the shop was clearly not in a federal enclave that was jurisdictionally exempt under the Collins test, the Court nonetheless held that no state liquor license could be required. In choosing to enforce the Constitution's Commerce Clause provisions over the state's twenty-first amendment rights, the Court observed that the amendment clearly did not repeal other Constitutional provi-

sions. Id. at 332. Invoking a balancing test, the Court concluded that the national Commerce Clause interests outweighed the state's twenty-first amendment rights, and struck down New York's licensing requirement. Id. at 332-33.

This balancing test has since been extended to non-Constitutional Federal laws and policies. In California Retail Liquor Dealers Association v. Midcal Aluminum Inc., 445 U.S. 97 (1980), the Court held that violations of the Sherman Act (15 U.S.C. §§ 1 et seq.) could not be shielded by the state's twenty-first amendment rights, observing that the power of the state must yield "when the State's regulation squarely conflicts

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with the regulation imposed by Congress." Id. at 109, n. 11.[3]

California's courts have agreed. In Sail'er Inn, Inc. v. Kirby, 5 Cal.3d 1, 95 Cal.Rptr. 329, 485 P.2d 529 (1971), the California Supreme Court found that a state law prohibiting women bartenders violated the Federal Civil Rights Act and the plaintiffs' equal protection rights, and was therefore invalid. The court explicitly rejected the state's twenty-first amendment arguments, noting that "although some early cases painted state powers under section 2 of the Twenty-first Amendment with a broad brush, later

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[3]It is interesting to note that the California Attorney General in that case evidently took a position adverse to Baxter Rice and the Alcoholic Beverage Control Board, despite its ostensible representation of the Board. The California Regulatory Law Reporter states that Mr. Rice "wrote a blistering letter to the Court denying its approval of AG representation of it." 1 California Regulatory Law Rptr. 36 (Spring 1981). The ABC did not oppose SB 1888. Section I, supra.

decisions have taken a position more in keeping with the original intent of the amendment." Id. at 12, 95 Cal.Rptr. at 335. In a later case involving Sherman Act violations, the same court held that when the twenty-first amendment conflicts with federal enactments, courts must "balance the policies furthered by each in order to determine which should prevail." Rice v. Alcoholic Beverage Control Appeals Board, 21 Cal.3d 431, 448; 146 Cal.Rptr. 585, 596; 579 P.2d 476 (1978).

California argues in its petition that this Court should undertake such a balancing test. PC 21-24. Since that test only becomes relevant when state territorial jurisdiction exists, it is not required here. In any event, given federal Indian laws and policies, such a test would not help California. Against (1) the admitted pre-1953 exclusive federal jurisdiction over Indian reservations, PC 7-8; (2) the admitted limited scope of

PL-280, PC 23; (3) the current federal policies favoring tribal self-government and freedom from state jurisdiction, Bryan v. Itasca County, 426 U.S. 373, 376, n. 2 (1976); (4) the preemptive and pervasive federal powers over Indians and their reservations under the Indian commerce clause, Art. 1, § 8, cl. 3 and the powers of Article II, § 2 of the Constitution, cf. Rehner at 1343; and (5) the canon of construction mandating resolution of ambiguities in statutes in favor of Indians, Bryan, supra, at 392, California can muster only its interest under the twenty-first amendment in avoiding the "fragmentation" of state control over licensing. PC 12. The state asserts that depriving it of licensing authority will somehow deprive it completely of its ability to regulate reservation liquor businesses and "the manner in which these businesses are conducted." PC 18. This assertion is flatly contradicted by the

language of 18 U.S.C. § 1161, which requires reservation sales to conform with both state law and federally-scrutinized tribal ordinances. The reservations will not become enclaves of liquor lawlessness merely because liquor sellers do not have state liquor licenses; many controls remain in effect under the Rehner decision to prevent that result. For example, state substantive liquor laws may be enforceable through federal courts or tribal action. Rehner at 1347-48. Some of the most important liquor restrictions are contained in California's Penal Code as criminal laws of statewide application, which are generally enforceable on California reservations under PL-280. See, e.g., California Penal Code §§ 382 [adulterated liquor], 397 [sales to insane or incompetent persons], and 398 [after-hours sales].

California repeatedly equates its lack of power to license with its lack of power to regulate, in depicting the evils of uncontrolled liquor enterprises on Indian reservations. See, e.g., PC 12, 16, 18. As explained above, they are simply not the same. California, the federal government, and the tribes themselves all maintain varying degrees of regulatory control, which in many cases may be considerably more stringent and more immediate than the thinly-spread regulatory enforcement of the California Alcoholic Beverage Control Board. Mrs. Rehner brought this case because she could not afford a California license, not because she sought freedom from state regulation. Complaint, paragraphs 5-8; First Amended Complaint, paragraphs 7-8 (Ninth Circuit

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Clerk's Record, Document Nos. 1, 8).[4] While California has a clear interest in the general regulation of liquor, its interest in licensing is far less compelling. It is that lesser licensing interest that must be balanced against the panoply of Indian interests in determining whether the Ninth Circuit decision impermissibly undermined the state's power. Even under that balancing test, respondent should prevail, especially when considered along with California's lack of territorial jurisdiction over federal lands. Petitioner's twenty-first amendment arguments are simply not persuasive.

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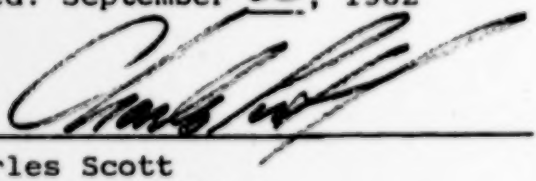
[4]In fact, petitioner Rice has personally advocated changing California's liquor licensing system to remove the economic barrier to new liquor enterprises, by removing the current "cap" that prevents issuance of new licenses in many areas and consequently drives up the price of a license on the open market to $60,000 or more. 1 Calif. Reg. Law Rptr. 37 (Spring 1981).

CONCLUSION

Because of California's legislative acquiescence in the Ninth Circuit decision, the lack of conflict in the circuits, the narrow interests involved, the lack of a valid Constitutional claim and California's failure to raise that claim below, the petition for certiorari should be denied.

Dated: September 30, 1982



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ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION SB 1888
FRANK VICENCIA, CHAIRMAN

STAFF ANALYSIS OF SENATE BILL 1888 (Dills) SENATE POLICY VOTE: 6-0

As Amended: June 18, 1982 SENATE FLOOR VOTE: 35-0

RECEIVED SEP 27 1982

SUBJECT

Includes premises on Indian land in the category of unlicensed premises to which wholesalers may sell liquor.

DIGEST

Existing law generally requires alcoholic beverage wholesalers to sell only to those retailers licensed by the Department of Alcoholic Beverage Control (ABC). Special exemptions to this provision have been made for nonlicensed retail premises on land maintained by the federal government on military reservations, national parks and veterans homes.

This bill would include retail premises on Indian land or land dedicated for Indian use within the special, nonlicensed premises category.

STAFF COMMENTS

This bill is sponsored by the Wine and Spirits Wholesalers of California in response to the recent court decision in Eva Rainer v. ABC (USCS-77-2409). Among other issues in that decision, the Federal Appeals Court ruled that premises on lands owned by Indians need not be licensed by the ABC.

This bill would allow wholesalers to sell alcoholic beverages to those premises.

KNOWN POSITIONS

SUPPORT: Wine & Spirits Wholesalers of California

There is no known opposition.

CONSULTANT: Lang SB 1888

6/21/82